



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 27, 1998

Mr. Vernon M. Arrell
Commissioner
Texas Rehabilitation Commission
4900 North Lamar Boulevard
Austin, Texas 78751-2399

OR98-1042

Dear Commissioner Arrell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114779.

The Texas Rehabilitation Commission (the "commission") received a request for five categories of information seeking specified memoranda, documentation, and an investigation report. You contend that the requested information is excepted from disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

You contend that all of the records at issue are excepted from public disclosure pursuant to section 552.103, the "litigation" exception. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

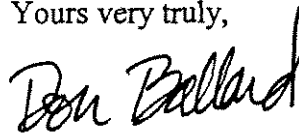
It is well established that where an individual has publicly stated on more than one occasion an intent to sue, these threats alone do not trigger section 552.103. Open Records Decision No. 331 (1982). *See also* Open Records Decision No. 351 (1982). Based on the limited facts before this office, we cannot conclude that you have met your burden in establishing the likelihood of litigation in this particular instance. Accordingly, the commission may not withhold any of the requested records pursuant to section 552.103.

However, some of the information contained in the documents submitted to this office for review is excepted from disclosure by common-law privacy under section 552.101

of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. We have marked the information that must be withheld. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 114779

Enclosures: Marked documents

cc: Mr. Willie Jones
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(w/o enclosures)